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Friday, September 26, 2008

Mr. Robert E. Feldman
Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, DC 20429

Re: Docket No. RIN 3064-AD30; Recordkeeping Requirements for Qualified Financial Contracts; 73 Federal Register 43635; July 28, 2008.

Dear Mr. Feldman:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) proposal to establish recordkeeping requirements for qualified financial contracts (QFCs)² held by insured depository institutions in a troubled condition.³ The proposed rule would require the institution, upon written notification by the FDIC, to produce, for a specified period of time, electronic and written files disclosing the bank's QFC positions, counterparties, and other information. The data would be due immediately at the close of the institution's processing business day.

The ABA appreciates the need for an efficient compilation of QFC records given the short period of time within which the FDIC must analyze an insolvent bank's positions. We have the following comments on the proposal:

- The rule should focus on those banks that are in "troubled condition."
- The FDIC should accept QFC information in the same format in which it is stored and used by the bank in the normal course of business.
- If the FDIC imposes new reporting obligations on some or all banks, affected institutions will need more time to comply with the rule.

¹ The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.3 trillion in assets and employ over 2 million men and women.

² QFCs include securities contracts, commodities contracts, forward contracts, repurchase agreements, swap agreements, related master and security agreements, and other similar agreements as defined by the FDIC.

³ The term "troubled condition" for QFC recordkeeping purposes is defined under the proposed rule, and does not mirror the definition used in 12 C.F.R. 303.101(c).

Background

A party to a QFC with an insolvent entity generally may terminate QFCs and offset or net out amounts due and apply any pledged collateral for payment. When the insolvent entity is a bank, the parties may not exercise these rights until 5:00 p.m. EST on the business day following the appointment of FDIC as receiver. Before the 5:00 p.m. deadline, the FDIC must decide whether to (a) transfer the QFCs to another financial institution, (b) repudiate, or (c) retain the QFCs in receivership.

Given the short amount of time the FDIC has to make these decisions, QFC information needs to be readily available in a format that facilitates quick and efficient analysis. The FDIC asserts the proposed rule and worksheets facilitate decision-making by placing needed information in an easily accessible, user-friendly format. The information required identifies (1) current positions; (2) counterparties and affiliates, including itemized and aggregate data; and (3) comprehensive lists of counterparty and portfolio location identifiers, affiliates, key agreements, documentation, contact information, and organizational charts of personnel and vendors handling QFC activities.

Concerns Arising from the Proposed Amendments

Focus on Unsound QFC Management

The FDIC's need for quick access to comprehensive QFC information is understandable. However, it is also important that expense be considered as well as the goal of minimizing potential harm to financial institutions. An alternative, risk-based approach to achieve all of these objectives would envision that the FDIC assure its access to data at a reasonable cost by focusing compliance on those institutions most in need of QFC oversight.

At the heart of the inquiry over which financial institutions should be subject to the proposed QFC reporting is the inference that the mere presence or absence of QFCs is determinative of an institution's safety and soundness. It would be better to focus QFC supervision on those institutions with poor QFC management or unsustainable QFC concentrations. Universal application of QFC reporting would only increase costs and produce operational inefficiency while doing little to improve the safety and soundness of either the effected banks or the banking sector as a whole.

Use Existing Data

Financial institutions with QFCs have access to the requested information as part of routine operations. However, in the regular course of business, QFC information is not maintained in worksheet form. Among community banks in particular, it is common to depend on third party service providers to manage QFC transactions and related data. A larger financial institution may manage its QFCs in-house, but the information is maintained in various formats and databases. Banks operating under either business model would have difficulty producing immediate delivery of QFC data in the proposed format. In order to comply, financial institutions would be forced to renegotiate service contracts at a high cost or to reprogram across multiple IT platforms.

We recommend instead that the FDIC permit banks to use data in their existing format. Banks could prepare and provide to the FDIC a “roadmap” of existing databases, files, bank policies, and QFC management procedures facilitating immediate FDIC access to comprehensive information while avoiding duplicative daily reports. QFC data files maintained by financial institutions or third party service providers are routinely updated in the regular course of business and, thus, are a sufficiently reliable substitute for the proposed daily reporting requirement.

The use of existing business records also solves the potential problem of reconciling data produced from a fluid settlement process within the artificial delivery deadline of “close of processing of the institution’s business day.” The proposed deadline does not reflect the reality of QFCs commonly placed internationally and settled globally at any hour of the day. Relying on data held in the bank’s or service provider’s database would provide the FDIC with more accurate information than what would have been provided by arbitrary completion of the proposed forms at the close of the processing day.

Extension of 30-Day Compliance Deadline

Under the proposal, banks would have 30 days to start compiling data using the forms proposed. However, many banks would need more than 30 days to comply with the proposal. A longer implementation period would be particularly important for community banks using third party service providers.

Under either the proposed rule or the roadmap alternative proposed in this letter, community banks *initially* would require sufficient time to renegotiate their service contracts while their service providers would need time to prepare their systems. Contract negotiation and system reorganization could require more than six months before the community bank and service provider could comply. A roadmap requirement would significantly decrease preparation time, because negotiations would be limited to drafting contact language recognizing the obligation of the service provider to respond immediately to FDIC requests for QFC data. Reorganization of the service provider’s operations would be limited, because the data could be delivered in the format used in routine business operations. Many financial institutions and service providers may be able to complete this negotiation within sixty days.

Under the proposed rule, financial institutions maintaining QFC portfolios in-house could require substantial time to reconfigure operations and integrate electronic databases to produce the proposed documentation on demand. However, an extension of time may not always be necessary if the FDIC accepts QFC information in the format in which it is used in regular business operations and relies on a data roadmap. Utilizing the roadmap option, many banks, particularly those that maintain their QFC portfolio in-house, may be able to comply within the 30-day limit.

Thank you for the opportunity to comment on this proposal. Should you have any questions, please contact the undersigned at 202-663-5333 or ddepier@aba.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Denyette DePierro". The signature is fluid and cursive, with the first name being the most prominent.

Denyette DePierro